

Q&A: The FTC's Changes to the Telemarketing Sales Rule

Federal Trade Commission ➤ Bureau of Consumer Protection ➤ Office of Consumer and Business Education

1. How do I sign up for the national “do not call” registry?

You will be able to sign up for free online or by calling a toll-free number. The web address and phone number for registration will be available at www.ftc.gov/donotcall. If you want to register by phone, you will have to call from the telephone line that you wish to register. If you register online, you may need to provide limited personal information for confirmation. The only identifying information that will be kept in the registry will be the phone number you register. Signing up will take only a few minutes. You can expect fewer calls within three months of the date you sign up for the registry.

2. What is it going to cost to sign up for the national “do not call” registry?

Registration is free. Consumers can register over the Internet or by calling a toll-free telephone number.

3. When will I be able to sign up?

- ➔ In July, consumers may begin registering for free online or by calling a toll-free number. To better manage the anticipated volume of registrations, initial sign-up by phone for the national “do not call” registry will be phased in, region-by-region, over an eight-week period. Online registration will be available nation-wide in July.
- ➔ In September, telemarketers and other sellers will have access to the registry. They will be required to scrub their call lists against the national “do not call” registry at least once every 90 days.
- ➔ In October, the FTC and the States will start to enforce the national “do not call” registry provisions of the Amended Telemarketing Sales Rule. Violators are subject to a fine of up to \$11,000 per violation. At this point, consumers on the registry should start to get fewer telemarketing calls.

The FTC’s implementation schedule for the national “do not call” registry will be updated at www.ftc.gov/donotcall.

4. How will the national “do not call” registry work?

You will be able to register for free online or by calling a toll-free number. Once your number is in the FTC’s national “do not call” registry database, telemarketers will be on notice that you do not want telemarketing calls. The Telemarketing Sales Rule (“TSR” or “Rule”) requires them to download the registry database and drop all registered numbers from their call lists. Telemarketers are required to do this at least quarterly.

After the law takes effect, if you register and yet still receive telemarketing calls, you’ll be able to file a complaint with the FTC online or by calling a toll-free number. A telemarketer who calls a number on the registry could be fined up to \$11,000 for each call.

Your number will stay on the registry for five years or until you take your number off the registry or change phone numbers. After five years, you will be able to renew your registration.

5. If I register my number on the national “do not call” registry, will it stop all telemarketing calls?

No. Placing your number on the national “do not call” registry will stop most, but not all, telemarketing calls. Some businesses are exempt from the TSR and can still call you even if you place your number on the registry. These include common carriers (such as long-distance phone companies and airlines), banks and credit unions, and the business of insurance, to the extent that it is regulated by state law. However, most telemarketing calls are placed by professional telemarketing companies on behalf of other compa-

nies whose goods or services are being sold, and even if the company whose goods or services are being sold is exempt from the TSR, the telemarketing company is covered and must comply.

The FCC has initiated a rulemaking proceeding that would extend the “do not call” registry to many of the businesses that are exempt from FTC coverage. That FCC proceeding is ongoing.

6. Because so many kinds of companies are exempt from the TSR, won't this new national “do not call” registry have a lot of holes?

No. All professional telemarketing companies must comply with the TSR, even if they are making sales calls on behalf of a company that is not covered. Failing to comply may subject the telemarketing company to a fine of \$11,000 for each call that is not in compliance with the Rule.

7. What about telemarketers calling from overseas? Are they covered? Won't you have difficulty enforcing your national “do not call” registry outside the U.S.?

Telemarketers calling U.S. consumers are covered, regardless of where they are calling from. Enforcement outside the U.S. is not as easy as it is at home, but it is not unusual for the FTC to take law enforcement action — and to prevail — against telemarketers calling from outside the U.S. Moreover, if a company within the U.S. solicits sales through an overseas professional telemarketer, that U.S. company is liable for any TSR violations of the telemarketer. Initiating enforcement action against such companies is not a problem for the FTC.

8. Won't this new national “do not call” registry cover less than the state “do not call” laws?

Coverage of the TSR is generally broader than state laws. The FTC's “do not call” registry requirements are at least as stringent as most state laws. It is true that the TSR covers only telemarketing across state lines, while state laws also cover any telemarketing that is confined within the state's borders. Because most unwanted telemarketing calls are part of nationwide, interstate selling campaigns, they will be covered by the FTC's “do not call” registry. At any rate, the states can continue to enforce their laws, which will not be affected by the FTC's national “do not call” registry.

9. Doesn't the Direct Marketing Association already run a free “do not call” program?

For a number of years the Direct Marketing Association has operated the “Telephone Preference Service” (TPS). The TPS is strictly a voluntary system, and only members of DMA — many telemarketers are not members — face a mild sanction for calling consumers who have signed up for the TPS. The FTC's national “do not call” registry will provide consumers with greater control over what telemarketing calls they receive.

10. I get lots of calls soliciting money for political organizations or for charities — will the national “do not call” registry stop those types of calls?

Political solicitations are not covered by the TSR. Telemarketers calling to solicit charitable contributions are not required to drop registered numbers from their call lists, but if you make a request to a specific organization that they not call you, they are required to honor your request. If they subsequently call you again, they may be subject to a fine of \$11,000.

11. What about callers that claim to be taking a survey?

If the call is really for the sole purpose of conducting a survey, it is not covered by the TSR. Only *telemarketing* calls are covered — that is, calls that solicit sales of goods or services. Callers purporting to take a survey, but also offering to sell goods or services, must comply with the TSR.

12. I'm happy that I can get rid of calls I don't want, but there are some telemarketing calls I don't mind receiving. Is there a way to allow only certain companies to call?

Yes. If you give a company your written permission to call you, they may do so even if you have placed your number on the national “do not call” registry.

Also, even if you put your number on the national “do not call” registry, the Rule allows companies with

which you have an established business relationship to call you for up to 18 months after your last purchase or delivery from it, or your last payment to it, unless you ask the company not to call again. (In that case, the Rule requires the company to honor your request, and if they subsequently call you again, they may be subject to a fine of \$11,000.) Also, if you make an inquiry to a company or submit an application to it, for three months afterwards the company can call you. If you make a specific request to that company not to call you, however, then the company may not call you, even if you have an established business relationship with that company.

If you do not want to put your number on the national registry, you can still prohibit individual telemarketers, one by one, from calling by asking them to put you on their company's "do not call" list.

13. I'm already on my state "do not call" list. What should I do?

The FTC is setting up a system to accept state lists into the national registry at no cost to the state. If a state is able to transfer its list to the FTC, you do not need to do anything to register on the national list — we will get your information from the state, but it may take a year or longer. Some state laws will not permit this transfer of information right away. In those cases, you may want to register on the national "do not call" registry as well as your state list. We will have more detailed information about each individual state as the time of consumer registration approaches. Keep checking www.ftc.gov/donotcall for information.

14. Does the FTC's decision mean that state "do not call" laws are no longer in effect?

No. State "do not call" laws remain in effect.

15. A friend of mine won a lawsuit against a telemarketer that wouldn't stop calling and collected \$500. Does this new FTC decision prevent suits like that in the future?

No. The Telephone Consumer Protection Act (TCPA) allows consumers to sue companies that fail to honor requests not to call.

16. Doesn't the Federal Communications Commission (FCC) have some "do not call" regulations also? How does this new FTC "do not call" program fit in with that?

The FCC has regulations that require each company to maintain its own "do not call" list. Generally, a company may not call a consumer that has asked to be placed on that company's "do not call" list. The FCC regulations do not conflict with the FTC's national "do not call" registry. The FCC is currently reviewing its telemarketing regulations pursuant to the Telephone Consumer Protection Act. Its comment period closes January 8, 2003.

17. Do I register just once? Or will I need to renew my registration after a while?

Your telephone number will stay on the registry for five years, unless you decide to take it off the registry or change phone numbers. After five years, you will be able to renew your registration.

18. Can businesses sign up for the "do not call" registry?

No. The "do not call" provisions of the amended TSR do not apply to business-to-business calls. As a result, businesses have no reason to register their telephone numbers.

19. I have two telephone lines. Are they both covered?

Yes. You will need to register each telephone line separately.

20. Can I register my cell phone number?

Yes.

21. I've noticed that when telemarketers call, my caller ID says "number not available" or something like that. Are you doing anything about that?

When the amended TSR goes into effect, telemarketers will be required to transmit their telephone number, and if possible, their name, to your Caller ID service. While it is technologically possible to transmit

callers' numbers nearly everywhere now, transmission of callers' names may not be available everywhere yet. Transmission of callers' ID information will enable you to know who is calling. This provision will take effect one year after the release of the Rule.

22. I've noticed that when telemarketers call, there's often a long pause before anyone comes on the line. This annoys me. Can't you do anything about that?

The amended TSR will greatly reduce the number of "dead air" or hang-up calls you receive from telemarketers. "Dead air" or hang-ups result from telemarketers' use of automatic dialing equipment that sometimes calls too many numbers for the number of sales representatives the telemarketer has available to handle the calls. When this happens, you rush to answer the phone, only to find no one there. The TSR has new provisions that will greatly decrease this practice. In the few instances when the telemarketer does not have an operator ready, it must play a recorded message letting you know who they are and their telephone number — but a sales pitch is prohibited by law. Also, to give you time to answer the phone, the telemarketer must let the your phone ring for at least 15 seconds or four rings before hanging up.

23. What other protections are there against unwanted telemarketing calls?

The TSR protects you from unwanted late-night telemarketing calls — calling times are restricted to the hours between 8 a.m. and 9 p.m. In addition the TSR requires telemarketers who call you to promptly tell you the identity of the seller or charitable organization and that the call is a sales call or charitable solicitation call before they make their pitch. Having this information "up front" enables you to decide quickly whether you are interested in hearing more or would rather terminate the call. Also, the TSR requires telemarketers, whether they call you or you call them, to disclose all material information about the goods or services they are offering and the terms of the sale, and prohibits them from making specific material misrepresentations.

24. So the TSR does more than regulate unwanted telemarketing calls. Are there any changes to the fraud and deception provisions of the Rule?

Yes. The amended TSR adds new provisions and strengthens existing ones to provide greater protection to consumers from fraud and deception. The most important of these changes addresses unauthorized charges to consumers' accounts. For example, some telemarketers and sellers have the ability to bill charges to your credit card account or other accounts *even if you do not give them your account number*. The amended TSR will help to protect you from unauthorized charges when this occurs. The amended TSR spells out the steps that telemarketers must follow to make sure you have agreed to make a purchase and requires that in every transaction they obtain your "express informed consent" to be charged, and to be charged to a specific account. If a telemarketer has your account information before the call, and is offering you goods or services on a "free-to-pay conversion" basis — meaning that you get the goods or services for free for a limited time and then you will be charged automatically — the telemarketer must get your permission to use a particular account number, ask you to confirm the number by repeating the last four digits, and, for your protection, keep an audio recording of the entire phone transaction.

Another change addresses problems that arise when a telemarketer uses a new or unfamiliar payment mechanism — for example, billing charges for goods or services to your checking account, your phone bill, your existing mortgage account, or some other account besides a credit card or debit card. When you pay for goods or services in a telemarketing transaction using any of these unconventional billing methods, the telemarketer must obtain your express verifiable authorization to the terms of the transaction. The Rule spells out in detail exactly what a telemarketer must do to make sure you understand what account will be charged, and how much.